

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,**

**Plaintiff,**

**-against-**

**NUMAN MAFLAHI,**

**Defendant.**  
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**03 CR 0412 (NG)**

**ORDER**

**GERSHON, United States District Judge:**

Defendant seeks bail pending appeal. His appellate brief challenges only his sentence. At the time of the sentence, on July 9, 2004, the Court of Appeals for the Second Circuit had not yet decided *United States v. Mincey*, 380 F.3d 102 (2d Cir. 2004), which directed courts in this circuit to continue to sentence under the United States Sentencing Guidelines (the “Guidelines”). Therefore, this court both applied the Guidelines and imposed an alternative sentence. The government acknowledges on appeal that, under *United States v. Booker*, \_\_\_ U.S. \_\_\_, 125 S. Ct. 738 (2005) and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005), the case must be remanded to this court to determine whether to resentence the defendant. The defendant argues that there are flaws in the sentence that point to a sentence on remand which would be substantially less than the five-year statutory maximum imposed. In light of the fact that the defendant does not challenge his conviction, and the fact that this court’s alternative imposition of a non-Guidelines sentence was based upon all applicable factors, the defendant cannot meet the standard for bail pending appeal set forth in 18 U.S.C. § 3143(b). The appeal does not raise a substantial question of law or fact likely

to result in reversal, an order for a new trial, a sentence that does not include a term of imprisonment or a reduced sentence to a term of imprisonment less than the total of the time already served plus the expected duration of the appeal process. As a result, the application for bail pending appeal is denied.

**SO ORDERED.**

/S/

**NINA GERSHON**  
**United States District Judge**

Dated: Brooklyn, New York  
April 21, 2005